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MOTION FILED

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No. 97-606

In The
SUPREME COURT OF THE UNITED STATES
October Term 1997

MIAMI UNIVERSITY,

Petitioners,

vs.

STATE OF OHIO, *ex rel. The Miami Student,*

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

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MOTION OF OHIO PUBLIC UNIVERSITIES FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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Pursuant to Rule 37 of the Rules of this Court, this motion for leave to file an *amicus curiae* brief in support of the petition for a writ of certiorari is presented to this Court by *amici* Ohio public universities.[1] Counsel for the Petitioner has consented to the filing of the brief *amicus curiae*. Counsel for Respondent has refused to consent to the filing of the brief *amicus curiae* thereby necessitating the filing of this motion.

Ohio's public universities represent twelve (12) state universities and two (2) free-standing "medical colleges".[2] Approximately 280,000 students were enrolled at these universities during the 1996-97 academic year. Ohio's public universities assert that this matter raises important and critical issues for not only petitioner but all of Ohio's universities and their students

In particular, public universities in Ohio believe it is critical that this Court provide some clarification to what is an "educational record" under the Family Educational Right to Privacy Act ("FERPA"). The Ohio Supreme Court is of the opinion that pursuant to the Ohio public records statute (Ohio Rev. Code § 149.43), a student's disciplinary record is not an education record while the U.S. Department of Education contends that such records are in fact education records. The

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[1]As required by Rule 37.6, counsel of record discloses that at the request of the other fourteen (14) universities, Miami University assisted in providing monetary support for the preparation of the *amicus curiae* brief and that counsel authored the brief *amicus curiae* filed on November 6, 1997 in part and with assistance of legal counsel for those other fourteen (14) universities.

[2]The fourteen (14) public universities and medical colleges include the following: University of Akron, Bowling Green State University, Central State University, Cleveland State University, University of Cincinnati, Kent State University, Medical College of Ohio, Miami University, Northeastern Ohio Universities College of Medicine, The Ohio State University, Ohio University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

conflicting views of the Ohio Supreme Court and the U.S. Department of Education have now put the State's universities in a precarious legal position.

Pursuant to the Department of Education's regulations, a university or college that does not comply with FERPA may have its eligibility to receive funding terminated. 34 C.F.R. § 99.67 (1996). For the 1995-96 academic year alone, the public universities in Ohio received over $719 million dollars in federal student financial aid programs from the U.S. Department of Education. Given the millions of dollars in financial support that Ohio's public universities receive from the federal government and the loss of such dollars which may result if these same institutions are forced to violate FERPA and comply with the Ohio Supreme Court decision, the universities believe their participation in this case will assist the Court in better understanding and resolving an important federal issue at stake in this case.

Moreover, it is the release of education records without the student's consent that Congress apparently was attempting to avoid by enacting FERPA. FERPA's legislative history demonstrates an express Congressional intent to protect the privacy of education records. *See Joint Statement in Explanation of Buckley/Pell Amendment, supra* at 39,862.

In addition, should there not be some clarification as to the interpretation of FERPA and Ohio law, Ohio's public universities will likely find themselves battling with their students in the courtroom. Under 42 U.S.C. § 1983, students may assert a claim for the deprivation of their rights under the Act. Given the Ohio Supreme Court decision, all of Ohio's public universities have now been placed in the position of having to defend against actions brought by students under 42 U.S.C. § 1983. Ohio's public universities, therefore, not only risk the loss of millions of dollars in federal funding but they

also face the possibility of being sued by their own students alleging that their federal rights under FERPA have been violated. As such, the universities' participation in this case is critical to understanding the various ramifications of the Ohio Supreme Court decision and the requirements of FERPA on Ohio's public institutions of higher education.

For all the foregoing reasons, Ohio Public Universities respectfully requests that this Court grant this motion for leave to file the brief *amicus curiae* in support of Petitioner's writ of certiorari.

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